

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

May 11, 2011

No. 11-10034
Summary Calendar

Lyle W. Cayce
Clerk

VAL-COM ACQUISITIONS TRUST; VALERIE SMITH; SYLVIA SMITH,

Plaintiffs - Appellants

v.

CHASE HOME FINANCE, L.L.C.,

Defendant - Appellee

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:10-CV-429-Y

Before HIGGINBOTHAM, SMITH, and HAYNES, Circuit Judges.

PER CURIAM:*

Valerie and Sylvia Smith purchased a home in 2007, financing the purchase through a note and deed of trust payable to NTFN, Inc. Thereafter, they transferred title to the home to Val-Com Acquisitions. In 2010, all three sued Defendant Chase Home Finance, L.L.C. ("Chase") alleging violations of the Truth-In-Lending Act ("TILA") and the Real Estate Settlement Procedures Act ("RESPA") as well as state-law claims for fraud, negligent misrepresentation,

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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and declaratory judgment. After Chase removed to a federal district court, they filed an amended complaint, changing the basis of their declaratory relief from the relevant Texas statute to the federal statute.

Chase moved to dismiss. The district court granted Chase's motion under Federal Rule of Civil Procedure 12(b)(6). The only matter briefed before this court is the propriety of the dismissal of Appellants' claims for declaratory relief regarding Chase's status relative to the property in question. Thus, we conclude that any appeal of the other matters dismissed has been waived. *Mullins v. TestAmerica, Inc.*, 564 F.3d 386, 417 (5th Cir. 2009) (“[W]e deem this issue waived due to inadequate briefing.”).

In their amended complaint, Appellants stated: “Defendant Chase claims to be the holder of the Note, and the person entitled to enforce the Note. . . . Defendant Chase claims to be the holder of the Deed of Trust, and the person entitled to enforce the Deed of Trust [and] . . . claims to be the current mortgage servicer of the Note.” They allege no facts whatsoever casting doubt on Chase's status as assignee of the relevant documents. They simply asked for “a determination and declaration of whether Defendant Chase is the owner and/or holder of the Note and Deed of Trust” and similar declarations regarding whether Chase is the mortgage servicer and entitled to enforce and bring a foreclosure action on the relevant documents.

A federal declaratory judgment action requires an actual case or controversy, not a mere hypothetical issue. *Pub. Serv. Comm'n v. Wycoff Co.*, 344 U.S. 237, 242 (1952). “Our decisions have required that the dispute be ‘definite and concrete, touching the legal relations of parties having adverse legal interests’; and that it be ‘real and substantial’” *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 127 (2007) (internal citations omitted). The district court concluded that Appellants did not allege an actual, current case or controversy on these points, and we agree. While there *could* be a dispute

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between the parties here, absent an allegation – even on information and belief – that Chase is not who it says it is, there is nothing for the district court to adjudicate.¹ Accordingly, the district court properly dismissed this case.

AFFIRMED.

¹ *Lozano v. Ocwen Federal Bank*, 489 F.3d 636, 639 (5th Cir. 2007), is inapposite. That case involved a declaratory judgment to set aside a foreclosure deed that the plaintiffs contended was entered improperly because they had previously paid the note. *Id.* at 638. Here, the portions of the complaint on which the appeal is based do no more than ask whether Chase is the proper party to pursue foreclosure, etc.; they fail to allege any facts in controversy.